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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 399

JAMES E. BLAYDES, WILLIAM E. MURPHY, ET AL.,
Appellants,

vs.

C. H. LITTLE & COMPANY, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL STATEMENT AS TO JURISDICTION AND SUPPLEMENTAL STATEMENT AS TO JURISDICTION.

HORACE C. YOUNG,
MILTON WILLIAMS,
Counsel for Appellants.

INDEX.

Subject Index.

	Page
Motion for leave to file supplemental statement as to jurisdiction	1
Supplemental statement as to jurisdiction	3
Reference to original statement as to jurisdiction	3
Nature of the case and rulings of the court which bring the case within the jurisdiction of the United States Supreme Court	4

Table of Cases Cited.

Beebe v. *Morgan, Treasurer*, 97 N. W. 986	6
Boswell v. *Otis*, 9 How. 336, 13 L. Ed. 164	6
Broadhurst v. *Board of Comm'rs*, 142 S. E. (N. C.) 477	4
Browning v. *Hooper*, 269 U. S. 396, 70 L. Ed. 330, 46 S. Ct. 141	4
Cumberland Coal Co. v. *Board of Revision*, 284 U. S. 23, 76 L. Ed. 146, 52 S. Ct. 48	5
Curtis v. *Hoyt*, 186 N. W. 460	6
Friedman v. *First National Bank*, 135 Pac. 1069	6
Gibson v. *Carroll*, 48 Tenn. 23	6
Gilman v. *Tucker*, 13 L. R. A. 304	6
Graves v. *Little Tarkio Drainage Dis't*, 134 S. W. (2nd) (Mo.) 70	4
Hollingsworth v. *Barbour, et al.*, 29 U. S. 466, 7 L. Ed. 922	5
Kuntz v. *Sumption & Board*, 2 L. R. A. 659	6
Maxwell v. *Lee*, 53 Tenn. 246	6
Mortgage Co. v. *Bishop's Harbor Drainage District*, 182 Sou. 794	6
O'Brien v. *Wheelock*, 184 U. S. 450, 46 L. Ed. 636, 22 S. Ct. 354	6
Paper Company v. *Shyer*, 108 Tenn. 462	6
People v. *Broad*, 5 Pac. (2d) 57	6
Ruohs v. *Athens*, 91 Tenn. 20	4

Page

Scott v. *McNeil*, 154 U. S. 46, 38 L. Ed. 901 5
Smith v. *Carter*, 131 Tenn. 1, 4, 7 4
Southern Railway v. *Va. ex rel. Shirley*, 290 U. S. 199, 78 L. Ed. 260 4
Stuart v. *Palmer*, 74 N. Y. 183 6
U. S. v. *Cummings*, 85 F. (2d) 275 5
Windsor v. *McVay*, 93 U. S. 274, 23 L. Ed. 914 6

STATUTES AND AUTHORITIES CITED.

Constitution of the United States, 14th Amendment 7
Cooley on "Taxation", p. 363, 2nd Ed. 6
Judicial Code, Section 237(a) 3
Public Acts of Tennessee, 1915, Chapter 62 4
Act 63 6
Rules of the Supreme Court of the United States, Rule 9 3
Ruling Case Law, Volume 9, Sec. 638 (12 C. J. 1228, Sec. 1006) 6
United States Code, Title 28, Sec. 344 5

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APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE.

MOTION TO FILE SUPPLEMENTAL STATEMENT AS TO JURISDICTION.

Comes now the appellants in the above entitled cause, and respectfully moves the court for leave to file the attached Supplemental Statement As To Jurisdiction.

Respectfully submitted,

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APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE.

SUPPLEMENTAL STATEMENT AS TO JURISDICTION.

Comes now William E. Murphy, et al., appellants herein, and in addition to the original statement as to jurisdiction, which accompanies the petition for appeal from the Supreme Court of Tennessee to the Supreme Court of the United States, respectfully adds the following:

I.

Reference to Original Statement as to Jurisdiction.

Among other things, the appellants in the original statement as to jurisdiction, set forth that the petition for appeal was filed under Rule 9, Section 237(a) of the Judicial Code,

seeking appeal from the judgment of the Supreme Court of the State of Tennessee upholding the validity of Chapter 62 of the 1915 Public Acts of Tennessee, providing that publication shall have the same force and effect as process and summons issued and personally served on the local Landowners and resident citizens.

II.

Nature of the Case and Rulings of the Court Which Bring the Case Within the Jurisdiction of the United States Supreme Court.

The appellants contend that this case is entirely out of the same category with those where districts are established by special acts of legislature, like, for example, municipal corporations, which may legally obtain service of process upon local residents by means of publication.

It seems that the United States Supreme Court has laid down a rule of definite distinction between these two types of cases—that of obtaining legal process on local residents by a municipal corporation, and that of obtaining legal process by a drainage district, which is neither a corporation *de facto* nor *de jure:*

Smith v. *Carter,* 131 Tenn. 1, 4, 7;
Ruohs v. *Athens,* 91 Tenn. 20;
Broadhurst v. *Board of Commissioners,* 142 S. E. (N. C.) 477;
Graves v. Little Tarkio Drainage District No. 1, 134 S. W. (2nd) (Mo.) 70;
Browning v. Hooper, 269 U. S. 396, 70 L. Ed. 330, 46 S. Ct. 141, and
Southern Railway v. *Va. ex. rel. Shirley,* 290 U. S. 199, 78 L. Ed. (U. S.) 260.

Further cases believed to sustain jurisdiction are as follows:

Cumberland Coal Company v. Board of Revision, 284 U. S. 23, 30, 76 L. Ed. 146-148, 52 S. Ct. 48,

where the court said:

"The specific contention that the plan of assessment violated the protection clause of the 14th Amendment, was presented by petition for reargument and was considered and explicitly overruled by the Supreme Court. If a state court entertained and decided the federal question, this Court has jurisdiction." Also citing *Judicial Code* 237 (b), U. S. C. Title 28, Section 344, and Cases. Also, *Cissna* v. *Tennessee,* 246 U. S. 289, 62 L. Ed. 720, 725, 48 S. Ct. 205.

The United States Code, Title 28, Page 257, Note 115, Section 344, reads as follows:

"Drainage proceedings—A decision of the Supreme Court of a State against the contention of Plaintiff in error that the operation of the state statute under which drainage district was constructed, is to deprive him of his property without due process of law, involves a Federal question."

Tregea v. *Modesta Irrigation District,* 164 U. S. 170, 17 S. Ct. 52, 41 L. Ed. 395-398.

As held by the United States Supreme Court in the early case of *Hollingsworth* v. *Barbour, et al.,* 29 U. S. 466, 7 L. Ed. 922-925, where "Instead of personal service of process upon the defendants in the suit, an order of publication was made against them * * *", the court said:

"The order of publication and the proceedings and decree thereupon, were wholly unauthorized and unwarranted by the law of the land."

Scott v. *McNeil,* 154 U. S. 46, 38 L. Ed. 901;
U. S. v. *Cummings,* 85 F. (2d) 275;

Boswell v. *Otis,* 9 How. (U. S.) 336, 13 L. Ed. 164-166;
Gilman v. *Tucker,* 13 L. R. A. (N. Y.) 304, 306, 309;
Stuart v. *Palmer,* 74 N. Y. 183.

It was held by the Tennessee Supreme Court in the case of *Gibson* v. *Carroll,* 48 Tenn. 23, "There being no service of summons in such case, a judgment by default without appearance is void."

Maxwell v. *Lee,* 53 Tenn. 246-249;
Paper Company v. *Shyer,* 108 Tenn. 462-464;
Windsor v. *McVay,* 93 U. S. 274, 23 L. Ed. 914-916;
Friedman v. *First National Bank,* 135 Pac. (Okla.) 1069, 1070;
Curtis v. *Hoyt,* 186 N. W. (Ia.) 460, 461.

Where a majority of the acreage or landowners failed or refused to sign the petition and only publication was had, or no personal summons or process on the majority, as in the instant case, it seems the district was void:

O'Brien v. *Wheelock,* 184 U. S. 450, 46 L. Ed. 636, 22 S. Ct. 354;
Mortgage Co. v. *Bishop's Harbor Drainage District,* 182 Sou. (Fla.) 794-795;
Act 63, 1915 Public Acts of Tennessee;
Kuntz v. *Sumption & Board,* 2 L. R. A. (Ind.) 659, 9 R. C. L. Sec. 638, 12 C. J. p. 1228, Sec. 1006;
Cooley on Taxation, p. 363, Second Edition;
Beebe v. *Morgan, Treasurer,* 97 N. W. 986, and
People v. *Broad,* 5 Pac. 2d. (Cal.) 57.

The appellants wish to point out two important facts: first, that the question of Constitutional violation in the instant case was raised in all the lower courts as shown in the record (R. 1, pp. 15-28; Tr. pp. 4-16; R. 3, pp. 110-111; Tr. pp. 102-104; R. 3, pp. 117-121; Tr. pp. 124-128; R. 1, pp.

1-2; Tr. pp. 1-3); and, secondly, that the Tennessee Supreme Court specifically stated in its opinion and decree as to the instant case, "The Supreme Court of the United States is the final Arbiter * * *" in these due process or drainage district tax matters.

It is respectfully submitted that the foregoing statement and the original statement clearly show grave and important questions of Constitutional law; in particular, a violation of the due process clause of the Fourteenth Amendment of the Constitution of the United States, and that consequently the Supreme Court of the United States, being the final arbiter in matters of this kind, should take jurisdiction of this case.

Respectfully submitted,

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